

(ii) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(A) Directly enforce the entire local program;

(B) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

(C) Seek judicial relief against local government for failure to properly enforce;

(D) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(E) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

§ 923.43 Direct State land and water use planning and regulation—Technique B.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B) of the Act, is direct state land and water use planning and regulation (control technique B).

(b) To have control technique B approved, the State must have the requisite direct authority to plan and regulate land and water uses subject to the management program. This authority can take the form of:

(1) Comprehensive legislation—A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.

(2) Networking—The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3.

(c) In order to apply the networking concept, the State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorities provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(d)(6) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies. A gubernatorial executive order will be acceptable if networked State agency heads are directly responsible to the Governor.

(3) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.